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IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE, DIVISION I  
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

FILED -8 AM 9:59

DAVID C. TORRENCE CLERK  
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STATE OF TENNESSEE )  
 )  
vs. ) No. 2004-D-3113  
 )  
PERRY AVRAM MARCH )

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**MOTION FOR BILL OF PARTICULARS**

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Comes now the Defendant, by and through counsel, pursuant to Article I, § 9 of the Constitution of the State of Tennessee, the Sixth and Fourteenth Amendments to the United States Constitution and Rule 7©) of the Tennessee Rules of Criminal Procedure, and moves this Court to order the State to promptly furnish a bill of particulars identifying, separately and individually with regard to each count of the indictment, the specific time and place of the alleged offense, and the names of the persons present when the alleged offense took place.

The Defendant commends to the Court the following commentary:

“The function of a bill of particulars is to provide defendant with information about the details of the charge against him if this is necessary to the preparation of his defense, and to avoid prejudicial surprise at the trial. A good many cases also mention an additional function of permitting the defendant to plead double jeopardy in the event of a subsequent prosecution of the same offense, but it may

be doubted whether this really adds anything to the functions previously described.

"The test in passing on a motion for a bill of particulars should be whether it is necessary that defendant have the particulars sought in order to prepare his defense and in order that prejudicial surprise will be avoided. A defendant should be given enough information about the events charged so that he may, by the use of diligence, prepare adequately for the trial. If the needed information is in the indictment or information, then no bill of particulars is required. The same result is reached if the government has provided the information called for in some other satisfactory form.

"A great many cases say that a defendant is not entitled to particulars if he has the means to ascertain the facts himself. Perhaps in some circumstances this is a valid proposition but there are severe limitations on it. The issue on a motion for a bill of particulars is not what the defendant knows but what the government intends to prove. Further, it is no answer to the motion for the government to say: 'The defendant knows what he did, and has all the information necessary.' **Since the defendant is presumed to be innocent he must be presumed to be ignorant of the facts on which the charges are based.**

". . . The bill of particulars, as was said before, is intended to give the defendant enough information about the charge so that he may adequately prepare his defense and so that surprise will be avoided. It is not intended, as such, as a means of learning the government's evidence and theories. But to the extent that information is needed for the proper purposes of the bill, it will be required even if the effect is disclosure of evidence or of theories.

"It is probably true that defendant can be sufficiently advised of the nature of the charge without requiring the government to go into matters of detail or to lay out its entire case or to state its legal conclusions. But these should not be regarded as rules in themselves and the sole question should be whether adequate notice of the charge has been given to the defendant. *Thus in order for the defendant to know against what he must defend it will frequently be necessary to require the government to disclose the time and place of the alleged offense, and the names of the persons present when the offense*

*took place."*


*State v. Hicks*, 666 S.W.2d 54, 56 (Tenn. 1984), quoting 1 C. Wright, *Federal Practice and Procedure, Criminal*, § 129 (1982) at 434 (citations and footnotes omitted.) (Italics supplied by Tennessee Supreme Court; boldface added.)

"[The State may not] satisfy its burdens under Art. I, § 9 of the Tennessee Constitution, the Sixth Amendment to the United States Constitution, and Rule 7©) of the Tennessee Rules of Criminal Procedure simply by alleging in a bill of particulars that it is unable to give specific dates on which the offenses occurred. There is always the possibility that descriptive information can be made available that will tend to narrow the time-frame of the indictment, even if exact dates cannot be provided." *State v. Byrd*, 820 S.W.2d 739, 742 (Tenn. 1991). "... [A] conviction must be reversed if trial testimony establishes that the state had in its possession, either actually or constructively, additional information that could have helped pinpoint the nature, time, or place of the offense, and withheld that information from the defendant. In withholding relevant information, the prosecution runs the risk that an otherwise valid conviction will ultimately be set aside." *Ibid.*, citing *State v. Hicks*, *supra*.

THE FOREGOING PREMISES CONSIDERED, the Defendant moves the Court to order counsel for the State forthwith to furnish a bill of particulars identifying, separately and individually with regard to each count of the indictment, the specific time and place

of the alleged offense, and the names of the persons present when the alleged offense took place.

Respectfully submitted,


  
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#### CERTIFICATE OF SERVICE

I certify that a correct and complete copy of the foregoing has been hand-delivered or mailed, first class postage prepaid, to the Office of the District Attorney General, 222 Second Avenue North, Nashville, Tennessee 37201, this 8TH day of September, 2005.

  
JOHN E. HERBISON